

105TH CONGRESS
1ST SESSION

S. 1137

To amend section 258 of the Communications Act of 1934 to establish additional protections against the unauthorized change of subscribers from one telecommunications carrier to another.

IN THE SENATE OF THE UNITED STATES

JULY 31, 1997

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend section 258 of the Communications Act of 1934 to establish additional protections against the unauthorized change of subscribers from one telecommunications carrier to another.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Slamming Protection
5 Act”.

1 **SEC. 2. ADDITIONAL PROTECTIONS AGAINST UNAUTHOR-**
2 **IZED CHANGES OF PROVIDERS OF TELE-**
3 **PHONE SERVICE.**

4 Section 258 of the Communications Act of 1984 (47
5 U.S.C. 258) is amended by adding at the end the follow-
6 ing:

7 “(c) **CRIMINAL PENALTIES.**—

8 “(1) **PERSONS.**—Any person who executes a
9 change in a provider of telephone exchange service
10 or telephone toll service in willful violation of the
11 procedures prescribed under subsection (a)—

12 “(A) shall be fined not more than \$1,000,
13 imprisoned not more than 30 days, or both, for
14 the first offense; and

15 “(B) shall be fined not more than \$10,000,
16 imprisoned not more than 9 months, or both,
17 for any subsequent offense.

18 “(2) **TELECOMMUNICATIONS CARRIERS.**—Any
19 telecommunications carrier who executes a change in
20 a provider of telephone exchange service or telephone
21 toll service in willful violation of the procedures pre-
22 scribed under subsection (a) shall be fined not more
23 than \$50,000 for the first offense and shall be fined
24 not more than \$100,000 for any subsequent offense.

25 “(d) **PRIVATE RIGHT OF ACTION.**—

1 “(1) IN GENERAL.—A subscriber whose pro-
 2 vider of telephone exchange service or telephone toll
 3 service is changed in violation of the procedures pre-
 4 scribed under subsection (a) may, within one year
 5 after discovery of the change, bring in an appro-
 6 priate court an action—

7 “(A) for an order to revoke the change;

8 “(B) for an award of damages in an
 9 amount equal to the greater of—

10 “(i) the actual monetary loss resulting
 11 from the change; or

12 “(ii) an amount not to exceed \$2,000;
 13 or

14 “(C) for relief under both subparagraphs
 15 (A) and (B).

16 “(2) INCREASED AWARD.—If the court finds
 17 that the defendant executed the change in willful
 18 and knowing violation of the procedures prescribed
 19 under subsection (a), the court may, in its discre-
 20 tion, increase the amount of the award under para-
 21 graph (1) to an amount equal to not more than
 22 three times the maximum amount awardable under
 23 subparagraph (B) of that paragraph.

24 “(e) ACTIONS BY STATES.—

1 “(1) AUTHORITY OF STATES.—Whenever the
2 attorney general of a State, or an official or agency
3 designated by a State, has reason to believe that any
4 person has engaged or is engaging in a pattern or
5 practice of unauthorized changes in providers of tele-
6 phone exchange service or telephone toll service of
7 residents in such State in violation of the procedures
8 prescribed under subsection (a), the State may bring
9 a civil action on behalf of its residents to enjoin such
10 practices, to recover damages equal to the actual
11 monetary loss suffered by such residents, or both. If
12 the court finds the defendant executed such changes
13 in willful and knowing violation of such procedures,
14 the court may, in its discretion, increase the amount
15 of the award to an amount equal to not more than
16 three times the amount awardable under the preced-
17 ing sentence.

18 “(2) EXCLUSIVE JURISDICTION OF FEDERAL
19 COURTS.—The district courts of the United States
20 shall have exclusive jurisdiction over all civil actions
21 brought under this subsection. Upon proper applica-
22 tion, such courts shall also have jurisdiction to
23 award declaratory relief, or orders affording like re-
24 lief, commanding the defendant to comply with the
25 procedures prescribed under subsection (a). Upon a

1 proper showing, a permanent or temporary injunc-
2 tion or restraining order shall be granted without
3 bond.

4 “(3) NOTICE TO COMMISSION.—A State shall
5 serve prior written notice of any civil action under
6 this subsection upon the Commission with a copy of
7 its complaint, except in any case where prior notice
8 is not feasible, in which case the State shall serve
9 such notice immediately after instituting such ac-
10 tion.

11 “(4) RIGHTS OF COMMISSION.—Upon receiving
12 notice of an action under this subsection, the Com-
13 mission shall have the right—

14 “(A) to intervene in the action;

15 “(B) upon so intervening, to be heard on
16 all such matters arising therein; and

17 “(C) to file petitions for appeal.

18 “(5) VENUE; SERVICE OF PROCESS.—Any civil
19 action under this subsection may be brought in the
20 district wherein the defendant is found or is an in-
21 habitant or transacts business or wherein the viola-
22 tion occurred or is occurring, and process in such
23 cases may be served in any district in which the de-
24 fendant is an inhabitant or where the defendant may
25 be found.

1 “(6) EFFECT ON STATE COURT PROCEED-
2 INGS.—Nothing contained in this subsection shall be
3 construed to prohibit an authorized State official
4 from proceeding in State court on the basis of an al-
5 leged violation of any general civil or criminal stat-
6 ute of such State.

7 “(f) CLASS ACTIONS.—For any class action brought
8 with respect to the violation of the procedures prescribed
9 under subsection (a), the total damages awarded may not
10 exceed an amount equal to three times the total actual
11 damages suffered by the members of the class, irrespective
12 of the minimum damages provided for in subsection (d).

13 “(g) NO PREEMPTION OF STATE LAW.—Nothing in
14 this section shall preempt the availability of relief under
15 State law for unauthorized changes of providers of intra-
16 state telephone exchange service or telephone toll serv-
17 ice.”.

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